

PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: A CRITICAL ANALYSIS OF CONTEMPORARY LEGAL FRAMEWORKS WITH A FOCUS ON MALAYSIA

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ABSTRACT

Domestic violence is a widespread issue that significantly impacts children, resulting in physical, psychological, and social damage. Although there is a worldwide acknowledgement of the necessity to safeguard children from such abuse, legal systems in various countries demonstrate differing levels of efficacy in confronting and alleviating the problem. This research analyses current legal systems designed to safeguard children from domestic violence, focusing specifically on the Malaysian context. This study assesses the strengths and weaknesses of the Malaysian legal system in protecting children's rights and welfare by examining the Domestic Violence Act 1994, the Child Act 2001, and related legislation. The study examines the integration of the Malaysian Penal Code Act 574 and the implementation of the Sexual Offences Against Children Act 2017 in Malaysia and its significance in tackling child protection concerns. The impact of international treaties, including the United Nations Convention on the Rights of the Child (UNCRC), on Malaysian legislation is examined. Emphasis is focused on the significance of inter-agency coordination, community engagement, and culturally attuned methodologies to guarantee the effective enforcement of these laws. The study ultimately endorses a holistic, child-centric legislative framework that safeguards children in Malaysia while fostering their entire welfare and development.

Keywords: Domestic Violence, Children, Malaysia, Child Act, Domestic Violence Act.

INTRODUCTION

Children hold immense importance and value in all societies, serving as the foundation for the future of families and communities. They represent the continuity of values and traditions, shaping future generations' social, economic, and intellectual landscape. In every society, children's well-being, education, and upbringing are prioritised, as they are seen as the key to societal growth and stability. Likewise, Islam also places great value on children and their rights. So many Qur'an verses highlight that children are a blessing and demonstrate that children are a provision from Allah (Sūrat al-Nahl: 72; Sūrat al-Shu'ara:132-133); therewithal is considered the ornament of worldly life (Sūrat al-Kahf: 46), and children recognised as a test from Allah Almighty. (Sūrat Al-Taghabun: 15).

People need to see these children as gifts from Allah Almighty and, more importantly, to perceive them as a trust given to them and to devote time to their care, education, and upbringing. According to a hadīth narrated from our Prophet Muḥammad (p.b.u.h). said: "He is not one of us who does not show mercy to our young ones, or recognise the rights of our elders." (Sunan Abū Dāwūd, 2009 & Sunan al-Tirmidhī, 2009 & Musnad Aḥmad, 2001). Moreover, The Qur'an and hadiths underscore the idea that treating them well, guiding them correctly, and protecting them is a moral duty and a responsibility that carries excellent rewards in Heaven.

Yet, despite this moral imperative, domestic violence persists as a pervasive global issue, posing critical threats to children's physical, psychological, and social well-being. The World Report on Violence and Health (2002) and the United Nations Secretary-General's Study on Violence against Children (2006) indicated that child maltreatment is pervasive across all societies (Nikku & Azman, 2014). Domestic violence refers to the misuse of power or acts of harm inflicted by one individual upon another within a household or familial environment. (Ali et al., 2023) Domestic Violence Act 1994 defines it to include physical injury, psychological abuse, and other forms of maltreatment within familial relationships (Domestic Violence Act, 1994). In the household environment, children frequently emerge as silent victims, either enduring abuse themselves or observing violence directed at other family members. In Malaysia, this issue has garnered increasing attention, particularly concerning the legal mechanisms designed to protect children from such abuse. Like many nations, Malaysia has established legal frameworks to address this issue, including the Domestic Violence Act 1994, the Child Act 2001 (Child Act, 2001 & DVA, 1994), and Sexual Offences Against Children Act 2017.

METHODOLOGY

This study employs a qualitative research design with a doctrinal approach to analyze Malaysia's contemporary legal frameworks for protecting children from domestic violence. The methodology is underpinned by a review of primary and secondary sources, including acts, international treaties, and scholarly articles. The study adopts a doctrinal approach, focusing on legal texts and frameworks to evaluate the robustness of Malaysia's child protection laws. This method enables a critical examination of the Child Act 2001 and the Domestic Violence Act 1994 and their alignment with international treaties such as the UNCRC. Primary sources include the text of Malaysian acts and international conventions. Secondary sources comprise academic articles, case studies, and reports. The research is focused on domestic violence and abuse against children in Malaysia, with particular emphasis on statutory frameworks and their practical implications.

LITERATURE REVIEW

Conceptualizing Domestic Violence and Child Abuse

Domestic violence includes a range of abusive behaviours, such as physical, emotional, and psychological harm, typically happening in familial contexts. Child abuse, a category of domestic violence, encompasses not only bodily harm but also neglect, emotional mistreatment, and sexual abuse. (Nikku & Azman, 2014; Fikri et al., 2024). The United Nations Convention on the Rights of the Child (UNCRC, 1990) characterises violence against children as “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,” thereby creating a worldwide framework for action (Hamilton, 2015).

Legal Frameworks in Malaysia

Malaysia has made significant legislative strides to protect children from domestic violence. The Child Act 2001 consolidates prior legislation, offering a thorough framework for child protection by criminalising abuse, neglect, and incest. The Act conforms to international standards, notably Article 19 of the UNCRC; however, its implementation remains inconsistent due to systemic barriers (UNCRC, 1990; Alwi & Muda, 2012; Ferdousi & Abdullah, 2024). The Children Act of 2001 (Act 611) in Malaysia is derived from four legislations: the Juvenile Act of 1947 (Act 90), the Child Protection Act of 1991 (Act 468), the Women and Girl Protection Act of 1973 (Act 106), and the Children Care Centre Act of 1984 (Jauhari & Hum, 2015).

Similarly, the Domestic Violence Act 1994 provides legal protection against various forms of abuse within families, including provisions for interim protection orders (IPOs) and punitive measures against perpetrators (DVA, 1994). The court may, while investigations concerning an offence of domestic abuse are ongoing, impose an interim protection order to prevent the individual against whom the order is issued from perpetrating domestic violence against the child. The interim protective order will terminate upon the conclusion of the investigations. (Jonit, 2006 & Abas, 2012) Section 4(2) of the DVA 1994 explicitly stipulates that “the application of IPO can only be made by way of application to the court. Thus, the application of an IPO, which requires a police report to be attached, allows the police to commence an investigation involving domestic violence.” (Randawar et al., 2021). Notably, this Act provides mechanisms such as Emergency Protection Orders (EPOs). The EPO offers quick interim protection for victims without requiring a police complaint or court appearance. However these are often underutilised due to limited awareness and logistical challenges in rural and underserved communities (Randawar et al., 2023; Ali et al., 2023). Recent studies support integrating legislative measures with public awareness campaigns and capacity-building programs. The implementation of the Sexual Offences Against Children Act 2017 in Malaysia exemplifies progressive efforts to address child-specific violence, yet, it necessitates supplementary policies for effective enforcement and victim assistance. (Jonit, 2006; Abas, 2012).

In addition to these acts, the Malaysian Penal Code (Act 574) includes provisions that criminalise various forms of child abuse, including physical harm, sexual offenses, and neglect. Sections relevant to child protection detail offenses and corresponding punishments. The Penal Code is an existing law against domestic violence offenders. It is stated in Section 3 of the DVA 1994 that the DVA 1994 should be read in conjunction with the Penal Code Act 574. Sections 323, 324, 325, 326, 334, and 335 of the Penal Code exemplify accusations related to domestic abuse. Section 326A of the Penal

Code fortifies the link between the Penal Code and domestic violence by stipulating penalties for inflicting harm on specific individuals, including a spouse or former spouse, a child, an incapacitated adult, or other family members (Mohamad et al., 2024).

Furthermore, the National Child Protection Policy (CPP) of Malaysia, implemented since July 2009, is an exemplary guideline for all stakeholders involved in ensuring children's safety. The CPP delineates child protection principles that align with the Convention on the Rights of the Child (CRC) and the Child Act 2001 (Act 611) of Malaysia. It emphasises advocacy, prevention, support services, and research and development in child protection (Nikku & Azman, 2014).

International Treaties and Standards

Malaysia's ratification of the UNCRC in 1995 signifies its dedication to safeguarding children's rights. The Convention underscores governmental responsibilities to safeguard children from violence, guarantee access to justice, and facilitate rehabilitation for victims. Notwithstanding this promise, critiques indicate that local laws inadequately fulfill UNCRC obligations, especially with required reporting systems and rehabilitation services (Hamilton, 2015; Abas, 2012).

RESULTS AND DISCUSSION

Child's welfare principle

In Malaysia, the principle of child welfare or best interest is recognised by both civil and Shari'ah courts. This principle, particularly regarding custody, is articulated in several legal provisions, including section 88(2)(a) and (b) of the Law Reform (Marriage and Divorce) Act 1976 (Act 164), section 86(2)(a) and (b) of the Islamic Family Law (Federal Territories) Act 1984 (Act 303), section 30(5) of the Child Act 2001, and section 11 of the Guardianship of Infants Act (GIA). It indicates that the child's wellbeing will precede the parents' rights, claims, and desires. The notion of the child's welfare applies not just to custody and guardianship but also to other factors affecting children, including health and safety, property division, education, and even in sentencing the children for the wrong that they have committed. (Salleh & Yusuf, 2018)

Strengths Malaysia's Legal Frameworks

Malaysia is the first Asian nation to enact legislation safeguarding victims of domestic violence and has acknowledged domestic violence as a matter of national concern. (Randawar & Jayabalan, 2018) Malaysia's legislative structures, notably the Child Act 2001 and the Domestic Violence Act 1994 (DVA), exhibit significant conformity with international standards, including the UNCRC. The Child Act 2001 delineates extensive child protection protocols, encompassing sanctions for abuse, neglect, and exploitation, and instituting provisions for Emergency Protection Orders (EPOs) under the Domestic Violence Act (DVA) (Hamilton, 2015; Alwi & Muda, 2012). The Social Welfare Department (JKM) can issue the Emergency Protection Order (EPO), which can be issued within two hours after the application, as stipulated in Section 3A of the Domestic Violence Act 1994 (DVA 1994) (Mohamad et al., 2024). In summary, victims also have another protection rights as provided under this Act such as interim protection orders under Section 4, and protection orders under Section 5 (Ali et al., 2023). The court may issue a protection order in cases concerning a domestic abuse allegation under Section 5(1) of the DVA. The court may issue a Protection Order to prohibit the abuser from perpetrating domestic violence against the victim, a minor, or an incapacitated adult (Randawar et al., 2021). The PO is valid for one year and may be renewed for an additional year if the trial continues (Mohamad et al., 2024).

These measures establish legal pathways to safeguard children from domestic abuse, assuring their protection while confronting perpetrators. Incorporating the Evidence of Child Witness Act 2007 further strengthens judicial procedures by ensuring the sensitive handling of child witnesses during court proceedings. This Act recognizes the psychological vulnerability of children and provides mechanisms for unsworn testimonies (Nazeri, 2007). The Act permits a child witness to testify in court while being shielded by a screen between him and the accused person or a child charged with the act or through a live link or video recording (Abas, 2012).

In addition to that, the Child Act 2001 of Malaysia (Act 611, Part V, Chapter 2, Sections 27-29) mandates that medical practitioners, family members, and child care providers report any child who has suffered physical or emotional harm due to mistreatment, neglect, abandonment, exposure, or sexual abuse to social welfare officers or law enforcement authorities (Nikku & Azman, 2014).

The Child Act 2001 further bolsters protections, emphasizing the state's role in ensuring children's welfare when families fail in their duties. Malaysia's Domestic Violence Act 1994 (DVA) was groundbreaking as it positioned domestic violence as a public concern rather than a private family matter. Subsequent amendments in 2012 and 2017 expanded the definition of domestic violence to include emotional, psychological, and economic abuse alongside physical harm. This aligns with international standards but faces challenges in implementation due to societal stigmas and a lack of specialized enforcement mechanisms (Randawar & Jayabalan, 2018).

Gaps in Implementations

Notwithstanding the solid legislative framework, considerable deficiencies persist in enforcement. Domestic violence is not recognised as an independent criminal offence and Penalties under existing laws are insufficient to deter offenders (Mohamad et al., 2024). Many cases of domestic violence and child abuse incidents remain unreported due to societal stigmas and insufficient awareness of legal protections (Nikku & Azman, 2014; Randawar et al., 2023). Law enforcement agencies often face logistical challenges, particularly in rural areas, limiting their capacity to implement protection measures effectively. In addition, the absence of specialised training for police officers, social workers, and healthcare personnel diminishes the effectiveness of intervention strategies. The dependence on conventional family structures frequently obstructs efficient reporting and intervention, as victims are hesitant to accuse family members (Abas, 2012; Fikri et al., 2024). Enforcement of protective measures such as Emergency Protection Orders (EPOs) remains inconsistent, particularly in rural areas. Delays in issuing orders and a lack of awareness among victims reduce their efficacy. Provisions allowing for expedited EPO issuance without a police report have improved accessibility but require better public dissemination (Randawar & Jayabalan, 2021). Despite advancements in domestic violence legislation, gaps persist in addressing custody and visitation rights for children. Abusive parents often exploit their legal access to intimidate victims further, highlighting a significant oversight in the current legal framework. Comparative studies suggest integrating custody considerations into domestic violence proceedings as a priority (Randawar, 2016).

Role of International Treaties

Malaysia has consistently opposed all forms of violence, particularly against women and children. By ratifying the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the United Nations Convention on the Rights of the Child (UNCRC), Malaysia has implemented programmes, legislation, and educational initiatives to safeguard these groups. The administration has consistently deemed these topics highly significant and critical to the nation (Jonit, 2006). Malaysia's ratification of the UNCRC in 1995 is a significant step toward ensuring children's rights. However, domestic laws often fall short of the Convention's mandates. For instance, while the Child Act 2001 aligns with the UNCRC, gaps exist in mandatory reporting systems and coordinated service delivery for victims (Hamilton, 2015; Jonit, 2006).

Challenges in Cultural and Social Contexts

Cultural stigmas surrounding family violence and abuse contribute to the reluctance of victims to seek help. Studies indicate that many victims prioritize family reputation over personal safety, perpetuating cycles of abuse. Moreover, the hierarchical nature of family structures often discourages children from reporting incidents involving authority figures within the home (Alwi & Muda, 2012; Jonit, 2006). This cultural norm is reinforced by patriarchal structures, which prioritize family unity over individual safety. Consequently, children exposed to violence often lack adequate support, leaving them vulnerable to continued abuse (Randawar et al., 2021).

Impact of the COVID-19 Pandemic

During the COVID-19 lockdowns, domestic violence cases surged (Ali et al., 2023). The COVID-19 pandemic exacerbated domestic violence cases globally, with Malaysia observing a 57% increase in domestic violence hotline calls during lockdowns. Movement restrictions confined victims with abusers, intensifying the risk of violence. This underscores the need for flexible legal mechanisms and accessible reporting channels during crises (Randawar et al., 2021). Economic, social, and psychological pressures during the pandemic exacerbated the issue (Mohamad et al., 2024). According to statistics published by the Royal Malaysian Police on domestic violence, there were 5,260 documented instances in 2020, and 4,905 cases reported throughout the first eight months of 2021 (Ali et al., 2023).

RECOMMENDATIONS

The family has a crucial influence in shaping a child's personality from an early age. In truth, many parents presently fail to fulfil their responsibilities, resulting in the neglect and isolation of their children (Fikri et al., 2024). A supportive family setting cultivates emotional security, ethical principles, and social competencies, vital for a child's comprehensive well-being. The government should promote a culture of respect, care, and non-violence in family settings and expand access to mental health services for both parents and children to address underlying issues such as trauma, depression, and anger management. Moreover, they should provide job training and economic opportunities for parents, particularly in low-income households, to alleviate financial stress, which is often a trigger for domestic violence.

The lack of integration between domestic violence and family law in Malaysia requires urgent redress. Provisions to suspend or modify custody rights for abusive parents should be prioritized to safeguard children (Randawar, 2016). Public awareness campaigns and targeted training for law enforcement and social workers are essential to dismantle cultural stigmas and improve enforcement. Specialized training can enhance sensitivity and efficiency in handling child abuse cases (Randawar et al., 2021). On the subject of child abuse, leveraging technology for reporting abuse and tracking protection orders can improve accessibility and monitoring. Online applications for EPOs, especially during crises like COVID-19, should be institutionalized to bridge enforcement gaps (Randawar & Jayabalan, 2021).

CONCLUSION

This research analysed the legislative frameworks in Malaysia established to safeguard children from domestic violence, explicitly emphasising the Domestic Violence Act 1994, the Child Act 2001, and associated legislation. Malaysia's domestic violence and child protection laws have made significant progress. Although these rules conform to international norms, particularly the UNCRC, deficiencies in enforcement and implementation remain. Societal stigmas, logistical obstacles, and cultural impediments have constrained the efficacy of these preventative measures, especially in rural and underdeveloped regions.

Increased efforts are necessary to educate society that domestic violence against children is a crime and can result in the loss of human potential for a nation. The findings highlight the need for a more integrated approach, combining legal reforms with community-based initiatives, public awareness campaigns, and targeted training for law enforcement and social workers. Enhanced mechanisms, such as expedited Emergency Protection Orders and technology-enabled reporting systems, are essential to bridging current enforcement gaps. Furthermore, the study underscores the necessity of aligning domestic laws more closely with international treaties to ensure comprehensive protection and rehabilitation for victims of domestic violence.

Prioritizing a holistic, child-centric framework that incorporates legal and social dimensions is critical for fostering a safer environment for children in Malaysia. Strengthening inter-agency coordination and addressing systemic barriers will safeguard children's rights and contribute to their overall welfare and development. This comprehensive approach promises to mitigate the multifaceted impact of domestic violence and secure a better future for vulnerable children.

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